

**ZONING BOARD OF APPEALS**

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ZBA 2010-10

Petition of James MacDonald

7 Cross Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 4, 2010, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of JAMES MACDONALD requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 20.5 foot by 23.2 foot two-story addition, and construction of a 12 foot by 20 foot two-story addition over an existing garage with less than required right side yard setbacks, on a 9,460 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 7 CROSS STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On January 19, 2010 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was James MacDonald (the "Petitioner"), who said that he was representing the homeowner, Cynthia Dareshori

Mr. MacDonald said that the plan is to build a two-story addition at the back of the house and a two-story over an existing garage.

Mr. MacDonald said that the total square footage of the house with the proposed construction would be approximately 3500 square feet. He said that they are proposing to do some finished basement space as well. The Board said that the threshold for Large House Review (LHR) is 3600 square feet in a 10,000 square foot Single Residence District. The Board said that the proposed house would be large for the lot.

The Board that the house had previously been permitted for a two-family use. Mr. MacDonald said that the two-family use will not be continued. He said that there was a kitchenette in what was somewhat of an in-law suite. He said that the owner now wants to use that area for one of her children.

The Board said that there are two external egresses from the in-law suite shown on the plan. Mr. MacDonald said that they will be closing one of them off to make an office at the front. The Board said that the homeowner can keep the egresses if the stove is removed. Mr. MacDonald said that the homeowner would like to keep the second egress to the back patio. He said that they will be removing the stove.

The Board said that the roof of the existing garage is at grade and the proposal is to put a two-story addition on top of that at a 4.1 foot setback. Mr. MacDonald said that they designed the addition over the garage as a gambrel style to keep the ridge line and the mass down.

The Board said that the neighbor to the right has a bay window on that side. The Board said that the neighbor will look right into the new two-story addition. The Board said that it would be difficult to make a finding that the two-story over the garage would not be substantially more detrimental to the neighborhood.

Mr. MacDonald said that the bulk of the neighbor's bay window is forward of the addition. He said that, at the very least, they will have to do some sort of railing system over the garage.

The Board said that even without the proposed two-story over the garage, the interior space could be rearranged to meet the proposed functions of the house.

The Board said that the proposed addition at the rear appears to meet the setback requirements.

Mr. MacDonald said that the ridge height of the rear addition will be higher than the existing ridge height.

Mr. MacDonald said that the second garage on the front elevation will require excavation. He said that the retaining wall will be moved. He said that they will maintain the height of the existing retaining wall at 5'6". He said that the property slopes from the street with a slight slope to the right.

Mr. MacDonald said that the setback for the retaining wall is approximately 25 to 30 feet. The Board said that the proposed retaining wall may be subject to new regulations that the Town passed. Mr. MacDonald said that if any of the proposed retaining wall will be in the setback area, it will be less than four feet high.

Warren Sheridan said that he was representing his mother-in-law at 8 Cross Street, Linda Lufty Clayton. Mr. Sheridan read a letter from Ms. Clayton.

In response to one of the issues discussed in Ms. Clayton's letter, The Board explained that building coverage calculations do not include driveways.

William Moynihan, 9 Waban Street, said that his house sits kitty corner to 7 Cross Street. He said that he is opposed to the granting of the Special Permit. He said that the proposed design would be good if the lot was bigger. He said that he was concerned about the density of buildings in the neighborhood. He said that the buildings are getting closer and closer.

Mr. Moynihan said that the problems are exacerbated by having the second kitchen. He said that he was concerned about fire potential. He said that he had opposed the granting of the Special Permit for a two-family for the previous owner. The Board said that the Special Permit has expired and it is the Board's intent to have the house revert back to a single family home.

Susan Hand, 26 Weston Road, said that she did not understand how someone would be allowed to build a 2.5 story addition less than 10 feet from the property line when the designated side yard setback is 20 feet per house. She said that it would be an eyesore and an infringement on the privacy of the existing home.

She said that there would be three clear dangers. She said that one danger is that it would be a fire hazard. She said that there would be access problems. She said that there will be problems with construction.

Ms. Hand said that the neighbors have worked over the years to make the neighborhood a strong, diverse residential border to the commercial district. She said that her husband and the late Mr. Clayton drafted and supported the townhouse area. She said that they supported the use of 10 Cross Street as a home for disabled adults. She said that they supported the need for a ground floor addition for a neighbor with health concerns. She said that this proposal does not benefit the larger community. She said that it impinges on a family that has lived there for almost 40 years. She said that it is a beautiful home that makes a significant contribution to the architecture and aesthetics of the Town.

Cynthia Dareshori, 7 Cross Street, said that she has lived in town since 1991. She said that she and her children love their new house.

The Board said that it encourages new homeowners to speak with their neighbors if they plan to make changes to the house. The Board encouraged Ms. Dareshori to sit down with her neighbors and listen to their concerns and discuss the plans as they are developed.

Dr. Jerome Carr, 17 Waban Street, said that he was concerned about the distance between the garage and the next door property for fire protection. He said that there would be two buildings within 9 feet. He said that the drainage runs around the garage to the front of the house. He said that putting a new building there will increase the amount of water runoff which could possibly go to the neighbor's house downhill.

The Board asked Mr. MacDonald about the fire code. Mr. MacDonald said that they will be using blueboard in the garage. He said that there will be grade separation between the garage and the house.

The Board said that this house would likely be over the threshold for LHR. The Board asked about landscaping plans. Mr. MacDonald said that there is a natural rise at the back. He said that they could preserve the existing vegetation and add screening. He said that one tree at the front of the driveway will be taken down.

The Board said that the houses to the back and to the left are larger. The Board said that it was concerned with the existing garage and the transition to the house next door.

The Board asked about exterior lighting. Mr. MacDonald said that lights will only be at the exit doors for safety.

Ed Hand, 26 Weston Road, said that they have lived there for 37 years. He said that he is currently a member of the Design Review Board. He said that if this house is close to the LHR threshold, it should be carefully checked out. The Board said that this house would be exempt from LHR because it is on a nonconforming lot.

Mr. Hand said that he was opposed to the design, especially the two-story addition over the garage. He said that he was concerned about the spacing. He said that the house is already the closest in the neighborhood.

Mr. Hand said that other houses on the street do not have attached garages. He said that the garage faces the street. He said that having two front facing garages will change the appearance of the neighborhood. He said that the two-story over the garage is incompatible with the neighborhood.

Mr. Hand said that putting the second garage in will require additional impervious area. He said that by building the two-car garage, they will be maxing out lot coverage. He said that, with careful planning, the homeowner could meet her objectives without building up. He asked that the Board reject the request.

The Board said that the proposal for the two-story addition over the garage would not support a finding that it would not be substantially more detrimental to the neighborhood. The Board said that it was their consensus that the petition for the two-story over the garage be denied and to allow the two-story addition at the rear of the house, subject to conditions.

Mr. MacDonald asked to speak to Ms. Dareshori. Mr. MacDonald said that the two-story over the garage will not be built.

Statement of Facts

The subject property is located at 7 Cross Street, on a 9,460 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 9.3 feet and a minimum right side yard setback of 4.1 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 20.5 foot by 23.2 foot two-story addition, and construction of a 12 foot by 20 foot two-story story addition over an existing garage with less than required right side yard setbacks, on a 9,460 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 7 CROSS STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 1/6/10, revised 1/11/10, stamped by Robert A. Gemma, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 12/16/09, prepared by Egan Associates, and photographs were submitted.

On February 3, 2010, the Planning Board reviewed the petition and recommended:

1. The proposed addition in the areas of the existing pergola and deck and proposed "garage under" be allowed consistent with the submitted plans.
2. The proposed addition over the existing garage be denied.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

The Special Permit for construction of a 12 foot by 20 foot two-story story addition over an existing garage with less than required right side yard setbacks, on a 9,460 square foot lot in a district in which the minimum lot size is 10,000 square feet is denied.

It is the finding of this Authority that construction of a 20.5 foot by 23.2 foot two-story addition shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted for construction of a 20.5 foot by 23.2 foot two-story addition, subject to the following conditions:

1. The house shall revert back to a single family residence
2. The exterior retaining wall for the addition of the garage shall meet all criteria of the pending Town Bylaw, as applicable.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm